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172 F.3d 39

Page 1

172 F.3d 39, 1999 WL 55259 (C.A.2 (N.Y.))  
(Cite as: 172 F.3d 39)

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U.S., By Dept. of Defense ex rel. Pentagen  
Technologies Intern'l, Ltd. v. CACI International  
Inc.

C.A.2 (N.Y.), 1999.

NOTICE: THIS IS AN UNPUBLISHED  
OPINION. (The Court's decision is referenced in a  
Table of Decisions Without Reported Opinions"  
appearing in the Federal Reporter. Use FI CTA2 s  
0.23 for rules regarding the citation of unpublished  
opinions.)

United States Court of Appeals, Second Circuit.

UNITED STATES OF AMERICA, By the  
Department of Defense, Ex rel.,  
PENTAGEN TECHNOLOGIES  
INTERNATIONAL, LIMITED and Russell D.  
Varnado, Plaintiffs-Appellants,  
v.

CACI INTERNATIONAL INC., Caci Systems  
Integration, Inc. and Caci, Inc.-Federal, First  
Defendants-Appellees,  
INTERNATIONAL BUSINESS MACHINES  
CORPORATION, Lockheed Martin Corporation,  
American Telephone & Telegraph Company, PRC,  
Inc., I-Net, Inc. and Statistica, Inc., Second  
Defendants-Appellees.

**No. 97-6326.**

Feb. 5, 1999.

Appeal from the United States District Court for the  
Southern District of New York, Robert W. Sweet,  
Judge.

Joel Z. Robinson, New York, NY, for Appellee.  
J. William Koegel, Jr., Steptoe & Johnson LLP,  
Washington, DC, for first Defendants-Appellees.  
Glenn Colton, Assistant United, States Attorney for  
the Southern District of New York, New York, NY,  
for the United States as Amicus Curiae.

Present NEWMAN, PARKER and SOTOMAYOR,  
Circuit Judges.

## SUMMARY ORDER

\*1 Plaintiffs-Appellants Pentagen Technologies  
International, Ltd. ("Pentagen") and Russell D.  
Varnado appeal from a decision entered August 18,  
1997 by the United States District Court for the  
Southern District of New York, dismissing their  
action brought under the False Claims Act, 31  
U.S.C. §§ 3729-3733, for lack of subject-matter  
jurisdiction.

This suit represents the latest in a number of  
actions brought by Pentagen against  
Defendants-Appellees arising out of the same set of  
operative facts. In *United States ex rel. Pentagen v.  
CACI Int'l, Inc.*, No. 94 Civ. 2925(RLC), 1996 WL  
11299 (S.D.N.Y. Jan. 4, 1996) ("*Pentagen V*"),  
Pentagen attempted to bring an action under the  
False Claims Act, but this action was dismissed for  
lack of subject-matter jurisdiction. Under 31 U.S.C.  
§ 3730(e)(4), no court has jurisdiction over any  
action brought by a private party under the False  
Claims Act that is "based upon the public disclosure  
of allegations or transactions in a criminal, civil, or  
administrative hearing ... unless ... the person  
bringing the action is an original source of the  
information." In *Pentagen V*, Pentagen had  
sufficient opportunity to litigate the issues of  
whether its information was publicly disclosed, and  
whether Pentagen was the "original source." Therefore,  
collateral estoppel bars Pentagen from  
relitigating these issues in the instant action.

Russell Varnado was not a party to *Pentagen V*,  
so he is not barred from pursuing his claims by  
virtue of collateral estoppel. However, his claims  
are nonetheless barred for lack of subject-matter  
jurisdiction. Specifically, 31 U.S.C. § 3730(b)(5)  
provides that "[w]hen a person brings an action  
under this subsection, no person other than the  
Government may intervene or bring a related action  
based on the facts underlying the pending action."  
Because Varnado's action, when filed, was based on

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172 F.3d 39

Page 2

172 F.3d 39, 1999 WL 55259 (C.A.2 (N.Y.))  
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the same facts underlying the then-pending  
*Pentagen V*, no federal district court had  
jurisdiction to entertain his claims.

For these reasons, the judgment of the District  
Court is AFFIRMED.

C.A.2 (N.Y.), 1999.  
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